

Michael A. Zody, USB #5830
Aaron M. Worthen, USB #15292
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Telephone: 801.532.1234
Facsimile: 801.536.6111
MZody@parsonsbehle.com
AWorthen@parsonsbehle.com
ecf@parsonsbehle.com

Attorneys for Oracle Corporation

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

MARK BARRETT, an individual,

Plaintiff,

vs.

ORACLE CORPORATION, a Delaware
corporation,

Respondent.

**DECLARATION OF ERIN DIAZ IN
SUPPORT OF MOTION TO COMPEL
ARBITRATION**

Case No. 2:20-CV-277-PMW

Judge Howard C. Nielson

I, Erin Diaz, hereby declare:

1. I am over 18 years of age, of sound mind, and capable of making this declaration.
2. I am employed by Oracle America, Inc. (“Oracle”) as a Senior Manager, Global Incentive Compensation.
3. In my role as a Senior Manager, Global Incentive Compensation for Oracle, I am familiar with Oracle’s written commission agreement and its practices and procedures regarding acceptance of terms and conditions of that agreement. The Global Incentive Compensation

organization is responsible for creating and issuing incentive compensation plan for Oracle sales employees and is the custodian of data and documents relating to those activities.

4. This declaration is given on the basis of my personal knowledge and my review of certain business records kept by Oracle in the course of its regularly conducted business activities.

5. As a sales employee during Fiscal Year 2020 (“FY20”), Mark Barrett was eligible to participate in Oracle’s Plan for that fiscal year. Oracle’s FY20 ran from June 1, 2019 to May 31, 2020. Oracle’s written FY20 Oracle Sales Compensation Plan (the “Plan”) sets the terms on which base salary and incentive sales compensation are paid to each sales employee at Oracle. The Plan is comprised of the following: (1) the Terms and Conditions Document (T&C); and (2) the Individual Compensation Agreement (ICA), provided to each incentive sales compensation eligible employee. The T&C document and the ICA constitute the agreement to the terms of the Plan, including but not limited to the Appendix (for US sales employees, including Mr. Barrett).

6. The T&C that is applicable to Mr. Barrett is Oracle’s FY2020 Sales Compensation Plan Terms and Conditions June 1, 2019 – May 31, 2020. The document is a record kept by Oracle in its regular course of business. A true and correct copy of the Appendix to the T&C, containing the arbitration agreement in the T&C, is attached as Exhibit 1.

7. Mark Barrett and Oracle also entered into a “Fiscal Year 2020 Individualized Compensation Agreement” (“ICA”), attached hereto as Exhibit 2. The document is a record kept by Oracle in its regular course of business. It was within the regular course of business for an employee or representative of Oracle to make this record or to transmit information thereof to be included in such record. The ICA is true and accurate to the best of my knowledge, information, and belief. The ICA contains highly sensitive, commercially valuable, confidential and proprietary

compensation information which Oracle strongly protects from disclosure. This includes, among other things, how Oracle compensates its sales employees, incentivizes and prioritizes sales of particular products and services by the structure of its sales employee incentives, its sales strategy and processes, the software tools and resources that it has developed and uses for the administration of sales compensation, and Oracle's internal business practices and procedures,. Accordingly, the confidential compensation information is redacted from Exhibit 2.

8. My team is the custodian of data and documents related to the workflow process used to issue Plans to Oracle sales employees. As such, I am familiar with this process and the steps that sales employees went through to accept their Plans in FY20 (and prior years). After accepting employment and then again around the beginning of each fiscal year (June 1 – May 31), Oracle sales employees, including Mr. Barrett, receive an email saying their commission plan is ready. That email provides instructions to navigate to Oracle's Compensation Planning Tool, or CPT. The CPT is the tool Oracle uses to issue and have employee accept the Plan. Employees are then shown a copy of the T&C, and the tool has them navigate through the entire agreement. Sales employees are required to scroll through each and every page of the T&C, including the Appendix containing the Agreement to Arbitrate Disputes, and then must check a box that indicates that they have reviewed the T&C and accept its terms.

9. After they have reviewed the T&C in the tool, the same tool displays a copy of their ICA. They are instructed to review the ICA, and then must click a button to electronically sign the Plan (the T&C and the ICA), indicating they have reviewed the Plan and accept its terms. The signature of the employee and date of the acceptance is then electronically stamped on the ICA on page 2 of that agreement.

10. The ICA specifically indicates that by accepting its terms, Mr. Barrett was accepting the Agreement to Arbitrate Disputes set forth in the Appendix to the Terms and Conditions (Ex. 1). The ICA shows on its face that Mr. Barrett accepted it on September 16, 2019.

11. Oracle is a technology company with offices in multiple states and countries and sells its products and services worldwide.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 11th day of June, 2020.



Erin Diaz

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of June, 2020, I electronically filed the foregoing **DECLARATION OF ERIN DIAZ IN SUPPORT OF MOTION TO COMPEL ARBITRATION** with the Clerk of the Court using the CM/ECF system, which will send an electronic notification to counsel of record for all of the parties.

/s/Michael A. Zody